

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
EVARISTO CARRASCO,  
Defendant.

Case No.: 12cr543 JM

**ORDER DENYING DEFENDANT'S  
MOTION FOR SENTENCE  
REDUCTION PURSUANT TO 18  
U.S.C. § 3582(c)(2)**

Defendant Evaristo Carrasco moves, pro se, for a sentence reduction on the basis of Amendment 782 to the United States Sentencing Guidelines (“the Guidelines” or “U.S.S.G.”). (Doc. Nos. 38, 40, 42.) Amendment 782 revised the Drug Quantity Table in Guidelines section 2D1.1 and reduced by two levels the offense level applicable to many drug trafficking offenses.<sup>1</sup> For the following reasons, the court denies Defendant’s motion.

**DISCUSSION**

In general, a criminal sentence is final upon completion of direct review, and the

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<sup>1</sup> Amendment 788 made Amendment 782 retroactive to previously sentenced defendants, limiting the effective date to November 1, 2015. See U.S.S.G., supp. App’x. C, amend. 788 (2014); U.S.S.G. § 1B1.10.

1 sentencing court thereafter lacks authority to revisit it. Dillon v. United States, 560 U.S.  
2 817, 821 (2010); United States v. Leniear, 574 F.3d 668, 673 (9th Cir. 2009). However,  
3 Congress created a limited exception to this rule in 18 U.S.C. § 3582(c), authorizing  
4 district courts to modify a sentence “in the case of a defendant who has been sentenced to  
5 a term of imprisonment based on a sentencing range that has subsequently been lowered  
6 by the Sentencing Commission.” United States v. Dunn, 728 F.3d 1151, 1155 (9th Cir.  
7 2013). In such circumstances, a two-step analysis applies. Dillon, 560 U.S. at 827. First,  
8 the court must determine “the amended guideline range that would have been applicable  
9 to the defendant if the relevant amendment had been in effect at the time of the initial  
10 sentencing.” Id. If the defendant is eligible for a sentence modification, the court must  
11 next consider any applicable factors under 18 U.S.C. § 3553 to determine whether a  
12 modification is warranted. Id. But the court must “leave all other guideline application  
13 decisions unaffected” and ensure that reductions are “consistent with applicable policy  
14 statements issued by the Sentencing Commission.” See generally U.S.S.G. § 1B1.10.

15 Here, Defendant pled guilty to importation of methamphetamine in violation of  
16 21 U.S.C. §§ 952 and 960. At sentencing, the court determined that Defendant’s base  
17 offense level was 38. After a 3-point reduction for acceptance of responsibility and a 2-  
18 point increase for importation, Defendant’s total offense level was 37. With a criminal  
19 history category of II, Defendant’s Guidelines range was 235 to 262 months. The court  
20 varied downward and sentenced Defendant to 120 months. Under the post-Amendment  
21 782 Guidelines, Defendant’s base offense level is 36 rather than 38, and his total offense  
22 level is 35 rather than 37. With the same criminal history category, Defendant’s amended  
23 Guidelines range is 188 to 235 months. Thus, Defendant’s original sentence is lower  
24 than the bottom of the amended Guidelines range. Because “the court shall not reduce  
25 the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy  
26 statement to a term that is less than the minimum of the amended guideline range,”  
27 U.S.S.G. § 1B1.10(b)(2)(A), Defendant is not eligible for a further reduction.

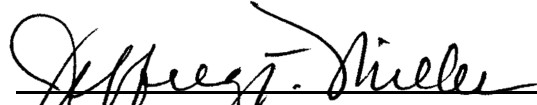
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**CONCLUSION**

For the foregoing reasons, the court denies Defendant's motion to reduce his sentence.

IT IS SO ORDERED.

DATED: October 31, 2016

  
JEFFREY T. MILLER  
United States District Judge